

## 21 C.J.S. Courts § 218

Corpus Juris Secundum | May 2023 Update

### Courts

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### VI. Rules of Adjudication, Decisions, and Opinions

#### B. Stare Decisis

##### 3. Extent of Precedential Effect of Decision

## § 218. Implication from earlier decision

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Courts](#) 89

**Stare decisis does not extend to cover implications in opinions, such as issues that might have been decided sub silentio.**

The rule of stare decisis may not be extended to cover implications from what was decided in a former case,<sup>1</sup> and thus, a case is not binding precedent if its holding is only implicit or assumed,<sup>2</sup> or the issue was decided sub silentio.<sup>3</sup> Constitutional rights are not defined by inferences from opinions that did not address the question at issue,<sup>4</sup> and a court does not normally overturn or dramatically limit its earlier authority sub silentio.<sup>5</sup> Similarly, the fact that an appellate court may have decided an appeal of a particular type of order on the merits is not dispositive of whether the order is appealable if the issue of appealability was not raised.<sup>6</sup>

### ***Jurisdictional issues.***

When questions of jurisdiction have been passed on in prior decisions sub silentio, the court is not bound when a later case finally brings the jurisdictional issue before it.<sup>7</sup> Thus, when a potential jurisdictional defect is neither noted nor discussed in a federal decision, the decision does not stand for the proposition that no defect existed.<sup>8</sup>

## CUMULATIVE SUPPLEMENT

**Cases:**

The Florida Supreme Court does not intentionally overrule itself *sub silentio*: where a court encounters an express holding from the Florida Supreme Court on a specific issue, the court is to apply the express holding in the former decision until such time as the Supreme Court recedes from the express holding. [Global Quest, LLC v. Horizon Yachts, Inc.](#), 849 F.3d 1022 (11th Cir. 2017).

**[END OF SUPPLEMENT]**

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**Footnotes**

1 Ariz.—[City of Bisbee v. Cochise County](#), 52 Ariz. 1, 78 P.2d 982 (1938).

Ky.—[Rex Coal Co. v. Campbell](#), 213 Ky. 636, 281 S.W. 1039 (1926).

Mo.—[Broadwater v. Wabash R. Co.](#), 212 Mo. 437, 110 S.W. 1084 (1908).

2 Alaska—[Joseph v. State](#), 26 P.3d 459 (Alaska 2001).

3 Ohio—[State ex rel. United Auto., Aerospace & Agricultural Implement Workers of Am. v. Bur. of Workers' Comp.](#), 108 Ohio St. 3d 432, 2006-Ohio-1327, 844 N.E.2d 335 (2006).

**Unreliability of sub silentio rulings**

Arguments based on what courts do not say are generally unreliable and should not be favored, especially when the court is faced with a contrary constitutional provision.

Ala.—[Ex parte James](#), 836 So. 2d 813, 174 Ed. Law Rep. 487 (Ala. 2002).

4 U.S.—[Texas v. Cobb](#), 532 U.S. 162, 121 S. Ct. 1335, 149 L. Ed. 2d 321 (2001).

5 U.S.—[Shalala v. Illinois Council on Long Term Care, Inc.](#), 529 U.S. 1, 120 S. Ct. 1084, 146 L. Ed. 2d 1 (2000).

6 S.C.—[Breland v. Love Chevrolet Olds, Inc.](#), 339 S.C. 89, 529 S.E.2d 11 (2000).

7 U.S.—[U.S. v. Bowers](#), 615 F.3d 715 (6th Cir. 2010); [Minority Television Project, Inc. v. F.C.C.](#), 736 F.3d 1192 (9th Cir. 2013), cert. denied, 134 S. Ct. 2874, 189 L. Ed. 2d 834 (2014).

8 U.S.—[Arizona Christian School Tuition Organization v. Winn](#), 563 U.S. 125, 131 S. Ct. 1436, 179 L. Ed. 2d 523, 265 Ed. Law Rep. 855 (2011).